

Magistrate Judge Arnold C. Rapoport

Judge Rapoport was born on April 4, 1931, in Allentown, Pennsylvania. He received a B.A. from Muhlenberg College in 1954 and a J.D. from Temple University School of Law in 1960. From 1962 to 1992, Judge Rapoport was in private practice in Allentown, Pennsylvania. Judge Rapoport was appointed a Part-time United States Magistrate Judge for the Eastern District of Pennsylvania on May 22, 1975; he was appointed a Full-time Magistrate Judge on May 4, 1992.

PRELIMINARY GENERAL MATTERS

1. Correspondence With the Court

Judge Rapoport permits correspondence from counsel on all matters. On occasion, correspondence will be treated as a motion. If the occasion demands, counsel will be instructed to file a formal motion in lieu of prior correspondence.

2. Communication With Law Clerks

Judge Rapoport permits counsel to speak directly with his law clerk with the understanding that counsel must carefully observe ethical considerations and avoid discussion of the merits of a pending case.

3. Telephone Conferences

Judge Rapoport encourages the use of telephone conferences.

4. Oral Arguments and Evidentiary Hearings

Judge Rapoport does not set aside specific days or times for oral arguments or evidentiary hearings.

CIVIL CASES

Pretrial Procedure

1. Pretrial Conferences

Judge Rapoport regularly conducts status conferences. Prior to the first status conference, Judge Rapoport sometimes issues a Preliminary Order establishing tentative dates for the completion of discovery, the final pretrial conference, and trial. The Preliminary Order also advises counsel of certain guidelines that probably will be followed by the Court throughout the case. Settlement is also discussed and is done as soon as possible after the filing of the complaint and answer.

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Judge Rapoport generally will schedule a pretrial conference and settlement conference at the request of counsel for a party. In complex cases, counsel are usually asked to prepare an agenda for pretrial and settlement conferences.

Continuances and Extensions

1. *General Policy*

Counsel will be given an opportunity to approve the dates for such matters as briefing schedules, oral arguments, evidentiary hearings, discovery deadlines, and trial dates. Once those dates are fixed by the Court, counsel are expected to arrange their private and professional schedules to conform to those dates.

2. *Requests for Extensions and Continuances*

Judge Rapoport does not impose any specific requirements as to how far in advance of a scheduled event counsel must request a continuance or an extension. If the situation warrants granting such a request, the request will be granted. Judge Rapoport has no preference as to the method by which counsel may seek a continuance or an extension, and he will accept such requests by motion, letter, stipulation, or conference call.

General Motion Practice

1. *Oral Argument on Motions*

Judge Rapoport generally will grant oral argument on motions if it is requested by counsel.

2. *Reply and Surreply Briefs*

If requested by counsel, reply briefs and supplementary briefs will generally be allowed by Judge Rapoport. Emphasis on *brief* briefs.

3. *Chamber Copies of Motion Papers*

Judge Rapoport encourages counsel to send courtesy copies of motion papers to his chambers.

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Discovery Matters

1. Discovery Conferences and Dispute Resolution

If problems surface in discovery, Judge Rapoport will hold a discovery conference at the request of an attorney or, if the situation warrants, *sua sponte*. Judge Rapoport permits telephone conferences to resolve discovery disputes that arise during depositions, only after the parties have taken ego clashes out of the dispute, except when he is on the bench.

2. Confidentiality Agreements

Judge Rapoport has no specific policy concerning uncontested confidentiality orders. He usually does not require a conference for consideration of a stipulated confidentiality order.

3. Expert Witness

In cases involving expert witnesses, Judge Rapoport prefers that each expert prepare a written report and that the depositions of expert witnesses be taken by counsel. Judge Rapoport has no specific policy concerning the point in a case at which the parties should identify expert witnesses.

Settlement

1. General Approach to Settlement and Non-jury Cases

Judge Rapoport's general approach to settlement negotiations is to discuss settlement as soon as possible and throughout the pendency of a case. Mature, earnest, professionals should understand and explain to their clients that the sequence of events is a settlement conference and, if that fails, then a trial. Actually, it is the settlement conference at which the parties will have their only chance to control the outcome of the case. The next settlement conference (often identified as a trial) wherein the outcome is decided by a jury, puts the outcome into the hands of strangers, thereby losing any ability to control the outcome.

In non-jury cases, Judge Rapoport will participate in settlement negotiations very rarely and only with the concurrence of all parties and counsel.

Proposed Final Pretrial Memoranda

1. Required Form of Pretrial Memoranda

In addition to the requirement of Local Civil Rule 21, Judge Rapoport normally requires counsel to comply with the requirements set forth in the Scheduling Order, which requires counsel, on a specific date, to file with the Clerk and serve on opposing counsel; (a) a list of all

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exhibits to be used at trial; (b) a list showing each witness to be called at trial and setting forth the point or points to be established by the testimony of each witness; (c) memoranda of law on all legal and evidentiary issues expected to arise at trial; and ((d) requests for instructions to the jury.

2. Common Deficiencies in Pretrial Memoranda

Judge Rapoport notes that late filing by counsel of proposed final pretrial memoranda is a deficiency that he commonly observes.

Trial Procedure

1. Scheduling of Cases

Each case on Judge Rapoport's calendar is assigned a date certain for trial with the understanding that more than one case may be scheduled on a particular date.

2. Conflicts of Counsel

When counsel become aware of professional or personal conflicts that may affect the trial schedule, they should notify Judge Rapoport and opposing counsel immediately. Such notice may be given to Judge Rapoport's deputy clerk by telephone, but it should be confirmed in writing.

3. Cases Involving Out-of-Town Parties or Witnesses

Although Judge Rapoport has no special policy for these matters, some consideration will be given to out-of-town attorneys, parties and witnesses.

4. Note taking by Jurors

Judge Rapoport generally allows note taking by jurors, subject to limiting instructions as to the use for their personal recollection and not to be shown to or used by other jurors.

5. Trial Briefs

Judge Rapoport generally requires the submission of trial briefs.

6. Voir Dire

Judge Rapoport usually permits counsel to conduct all *voir dire*. Judge Rapoport's deputy clerk normally is present during *voir dire*, and she is familiar with legal matters involved in jury selection. If problems arise and the deputy clerk cannot achieve agreement among

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counsel, she will notify Judge Rapoport, and Judge Rapoport or another available judge will come to the bench to resolve the dispute. Judge Rapoport does not place any time limits on *voir dire* so long as counsel do not abuse the privilege.

7. *Side Bars*

Judge Rapoport discourages side-bar conferences.

8. *In Limine Motions*

Counsel may submit motions *in limine* at any time, provided that the Court has an adequate factual basis in the record and is not asked to rule in a vacuum or render an advisory opinion.

9. *Examination of Witnesses Out of Sequence*

Judge Rapoport permits counsel to call witnesses out of turn for the convenience of the witnesses.

10. *Opening Statements and Summations*

Judge Rapoport generally does not impose a time limit on opening statements. With regard to summations, time limits generally are not imposed, but Judge Rapoport discusses time limits for summations with counsel at the charging conference on jury instructions. As to opening statements and summations, brevity is a virtue.

11. *Examination of Witnesses or Argument by More Than One Attorney*

Judge Rapoport generally does not permit more than one attorney for a party to examine different witnesses or to argue different points before the Court.

12. *Examination of Witnesses Beyond Redirect and Recross*

Judge Rapoport generally does not permit further examination of witnesses after redirect and recross have been completed.

13. *Videotaped Testimony*

With respect to the use of videotaped testimony, Judge Rapoport has no special procedures. He prefers that the equipment be set up on advance to avoid wasting time in the courtroom. It is the obligation of the attorneys to see that the equipment they need is in the courtroom.

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14. Reading of Material Into the Record

Judge Rapoport has no special practice or policy about reading stipulations, pleadings, or discovery materials into the record.

15. Preparation of Exhibits

Judge Rapoport requires that all documentary and photographic exhibits be pre-marked and that counsel exchange copies of all such exhibits with each other and provide an opportunity for opposing counsel to view any models or videotapes. Counsel should provide one copy of all trial exhibits to Judge Rapoport.

16. Offering Exhibits Into Evidence

Judge Rapoport has no preference as to when counsel should offer exhibits into evidence.

17. Motions for Judgment as a Matter of Law and Motions for Judgment on Partial Findings

Motions for judgment as a matter of law (or motions for judgment on partial findings in non-jury trials) may be oral or written. Judge Rapoport rarely allows oral argument on such motions.

18. Proposed Jury Instructions and Verdict Forms

Judge Rapoport requires that counsel submit proposed jury instructions. Judge Rapoport permits submission of supplemental proposed jury instructions prior to the delivery of the charge. Judge Rapoport usually conducts a charging conference on proposed jury instructions.

19. Proposed Findings of Fact and Conclusions of Law

Judge Rapoport requires submission by counsel of proposed findings of fact and conclusions of law.

Jury Deliberations

1. Written Jury Instructions

Judge Rapoport gives the jury a copy of the instructions only when requested to do so.

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2. Exhibits in the Jury Room

Judge Rapoport's general rule is that if an exhibit is admitted into evidence, it goes to the jury room.

3. Handling of Jury Requests to Read Back Testimony or Replay Tapes

If the jury requests to have portions of testimony read back, the testimony is played back on the court's electronic court-reporting equipment. When audiotape or videotape recordings have been admitted into evidence, and the jury requests that they be replayed, Judge Rapoport permits this, and it is done in the courtroom.

4. Availability of Counsel During Jury Deliberations

Judge Rapoport permits counsel to return to their offices and be available on telephone notice during jury deliberations.

5. Taking the Verdict and Special Interrogatories

In most civil cases, Judge Rapoport submits written interrogatories to the jury.

6. Polling the Jury

If there is a request to poll the jury, the jury is polled by the courtroom deputy.

7. Interviewing the Jury

Judge Rapoport permits counsel to interview jurors after the verdict has been recorded and the jury has been discharged. Counsel are directed not to be abusive of jurors in such interviews. The jury is generally told that they may, but are not required to, speak with counsel.